...E COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 199

Docket No. 1927 (Vermont)

WILFRED R. WHEELER,

Appellant,

—v.—

STATE OF VERMONT.

ON APPEAL FROM THE SUPREME COURT OF VERMONT

Docket No. 42-69 (Vermont)

WILFRED R. WHEELER,

Appellant,

—v.—

STATE OF VERMONT.

ON APPEAL FROM THE SUPREME COURT OF VERMONT

PETITION FOR REHEARING

WILFRED WHEELER

by JAMES C. CLEVELAND
New London, New Hampshire

LAURENCE F. GARDNER
Lebanon, New Hampshire

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PETITION FOR REHEARING

The Appellant respectfully petitions for reconsideration of this Court's per curiam decision decided October 13, 1969 dismissing the appeal in this case for want of a substantial federal question. In support of this petition Appellant submits:

1. Appellant does not contend that Vermont cannot tax non-residents on income earned in Vermont, which has long been a well established constitutional principle. It is our contention that Vermont cannot use a non-resident's out-of-state income which admittedly it cannot tax, to increase the tax on his in-state income, thus, by indirection, taxing the out-of-state income.

2. Involved in this case is far more than Wilfred Wheeler and the few tax dollars we claim have been unconstitutionally taken from him. Thousands of New Hampshire people are already directly involved. Indirectly, millions of people who live in one state and work in another are also involved. If this case stands, it will expand with heightened impact, the taxing power of a state across state boundaries, inviting interstate tax invasions of substantial proportion.

3. There is no case decided by this Court squarely on the issues presented. No other states have adopted the Vermont system. The fact that tax hungry states, such as New York, have not attempted to use the Vermont system for taxing out-of-state workers, is clear proof of the lack of authority to embark on the novel Vermont system. It is exactly this point that makes the issues presented here a substantial federal question. Directly at stake is the substantial question whether states can use the Vermont method of taxing non-resident workers to expand their tax revenues by millions of dollars.

4. The State of Vermont itself desired a final decision on the troublesome and entirely novel issues pre-

sented by this case. This is proved by the record which shows how fully the State cooperated in presenting the two cases involved, and particularly to avoid any possibility that the first case might have been considered moot by this Court. At the very least, this Court should affirm the Vermont decision as they requested.

5. Otherwise, the Appellant or some other person will, eventually in full fairness to their claim and the thousands of other people involved, be constrained to try again by another route to have the important issue of this case decided by some tribunal other than one that is constituted by the same taxing authority whose method of taxing is being challenged.

In fairness to the states who must look to decision of this Court for guidelines to legally implement their revenue raising policies, a full decision on the substantial federal question presented here is manifestly in the best interests of our federal system. To leave this novel tax issue still shrouded in doubt would be a disservice to that system.

6. As a practical matter, the issue involved in these cases for most taxpayers in New Hampshire now, or other states later, will always involve a very small amount of money, rendering difficult the kind of challenge which has been put together in these test cases at considerable expense and investment of time. Such a situation could very well involve an instance where there is a right but, in effect, no remedy.

WHEREFORE, we respectfully suggest that there is a substantial federal question involved and request that the Court reconsider its per curiam decision decided on October 13, 1969.

by JAMES C. CLEVELAND
New London, New Hampshire

LAURENCE F. GARDNER
Lebanon, New Hampshire

I, James C. Cleveland, counsel for the Appellant, do hereby certify that the within Petition for Rehearing is presented to the Court in good faith and not for delay.

JAMES C. CLEVELAND
Attorney for the Appellant